

Order

Michigan Supreme Court
Lansing, Michigan

December 11, 2009

Marilyn Kelly,
Chief Justice

139537 & (67)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant/Cross-Appellee,

v

SC: 139537
COA: 280887
Kent CC: 06-000220-FC

MARCO ANTONIO HERCULES-LOPEZ,
Defendant-Appellee/Cross-Appellant.

On order of the Court, the application for leave to appeal the June 30, 2009 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other peremptory action. MCR 7.302(H)(1). At oral argument, the parties shall address: (1) whether the defendant was deprived of counsel at a critical stage of the proceedings where the trial court, in the absence of defense counsel, sent jurors a note answering a jury question regarding the necessary intent for conspiracy and counsel was unable to review the note until after the jury returned its guilty verdict; (2) whether the trial court's answer to the jury question merely repeated initial jury instructions or constituted a new nonstandard instruction; (3) if the reinstruction in counsel's absence was not structural error, whether it resulted in plain error under *People v Carines*, 460 Mich 750 (1999); and (4) the relevance, if any, of the conduct of defense counsel after being informed, while deliberations were still progressing, of what transpired relative to the note and the court's instruction. The parties may file supplemental briefs within 42 days of the date of this order, but they should not submit mere restatements of their application papers.

The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

The application for leave to appeal as cross-appellant remains pending.



s1208

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 11, 2009

Corbin R. Davis

Clerk